

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNA M. RICHARDSON and U.S. POSTAL SERVICE,
POST OFFICE, Southampton, Pa.

*Docket No. 96-2126; Submitted on the Record;
Issued July 1, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

In the present case, appellant filed a claim on August 30, 1993, alleging an emotional condition and fibromyalgia causally related to her federal employment. By decision dated March 31, 1994, the Office denied the claim on the grounds that appellant had not established a condition causally related to compensable factors of her federal employment. Following a hearing on September 29, 1994, an Office hearing representative affirmed the denial of the claim in a decision dated November 1, 1994.

In a letter dated January 6, 1995, appellant requested reconsideration of her claim. By decision dated April 6, 1995, the Office reviewed the case on its merits and denied modification of the prior decisions.

In a letter dated March 29, 1996, appellant again requested reconsideration. She submitted a report dated March 15, 1996 from Elaine Kasirsky, M.S., a psychotherapist. By decision dated April 5, 1996, the Office denied the request for reconsideration without merit review of the claim.

The jurisdiction of the Board is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed her appeal on June 28, 1996, the only decision over which the Board has jurisdiction on this appeal is the April 5, 1996 decision denying her request for reconsideration.

The Board has reviewed the record and finds that the Office properly denied appellant's request for reconsideration without reopening the claim for merit review.

¹ 20 C.F.R. § 501.3(d).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.⁴

In this case appellant submitted a report dated March 15, 1996 from Elaine Kasirsky, psychotherapist. This report is identical to a June 25, 1994 report that was cosigned by Martin J. Kaplan, a psychologist, and had been previously submitted to the Office. The Office considered the report in its April 6, 1995 merit decision. As noted above, in order to require the Office to reopen the claim for merit review, the evidence submitted must be new and relevant. The Board finds that the evidence submitted was previously of record and is not sufficient to require the Office to review the merits of the claim.

The Board notes that the Office made a finding in its April 5, 1996 decision that Ms. Kasirsky was not a physician. Under the Act, the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.⁵ The Office apparently found that appellant was not a "clinical psychologist," without providing further discussion.⁶ It is not entirely clear from the record whether Ms. Kasirsky meets the definition of a clinical psychologist;⁷ since the report submitted is not considered new evidence and therefore cannot be sufficient to reopen the claim, the Board need not make specific findings on this issue.

The March 29, 1996 request for reconsideration did not show that the Office erroneously applied or interpreted a point of law, did not advance a point of law or fact not previously considered, nor did appellant submit relevant evidence not previously considered by the Office.

² 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.")

³ 20 C.F.R. § 10.138(b)(1).

⁴ 20 C.F.R. § 10.138(b)(2); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

⁵ 5 U.S.C. § 8101(2).

⁶ A clinical psychologist is defined as an individual who (1) is licensed or certified as a psychologist at the independent practice level of psychology by the state in which he or she practices, and (2) either possesses a doctoral degree in psychology from an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation or is listed in a national register of health service providers in psychology which the Secretary of the Department of Labor deems appropriate, and (3) possesses two years of supervised experience in health service, at least one of which is post degree. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Overview*, Chapter 3.100.3 (October 1990).

⁷ The lack of a doctoral degree, for example, does not appear to preclude an individual from qualification as a clinical psychologist, since part (2) above provides an alternative to possessing a doctoral degree.

Accordingly, the Board finds that the Office properly denied appellant's request for reconsideration without review of the merits of the claim.

The decision of the Office of Workers' Compensation Programs dated April 5, 1996 is affirmed.

Dated, Washington, D.C.
July 1, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member